

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201246003**

Release Date: 11/16/2012

Index Numbers: 7701.00-00; 9100.31-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-105236-12
Date:
August 01, 2012

LEGEND

Estate =

State =

Decedent =

Corporation =

Foundation =

Dear :

This is in response to a letter dated January 18, 2012, submitted on behalf of Estate, requesting a ruling under § 642(c) of the Internal Revenue Code.

FACTS

According to the information submitted, Estate is the estate of Decedent. Foundation is a charitable private foundation tax exempt under § 501(c)(3). Decedent's will provides that after the payment of specific bequests, debts and expenses, the residue of Estate must pass to Foundation.

Estate is the sole member of Corporation, a professional limited liability company treated as an S corporation for federal tax purposes. Corporation, a cash method taxpayer, owns receivables (Receivables). It intends to make a non-liquidating distribution of a portion of its unrealized Receivables to its sole member, Estate. Upon receiving the distribution of Receivables from Corporation, Estate will use the Receivables to satisfy remaining estate liabilities and then, either distribute Receivables to Foundation or permanently set aside Receivables into a segregated account for the benefit of Foundation.

Estate acknowledges that the distribution of Receivables will result in Corporation, a cash method taxpayer, recognizing ordinary income equal to the fair market value of Receivables under §§ 311(b) and 1221(a)(4) and that Estate is required to take that income into account under § 1366(a).

Estate requests a ruling that Estate will be allowed a charitable deduction under § 642(c) to the extent the Corporation actually distributes Receivables to Estate and Estate either pays or sets aside those Receivables for Foundation.

LAW AND ANALYSIS

Section 642(c)(1) provides that in the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to the deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)).

Section 642(c)(2) provides that in the case of an estate, there shall be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in § 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

Section 1.642(c)-2(a) provides for an unlimited deduction for any part of the gross income of an estate which pursuant to the terms of the will (1) is permanently set aside during the taxable year for a purpose specified in § 170(c) or (2) is used or to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment of, acquisition, maintenance, or operation of a public, non-profit cemetery.

Section 1.642(c)-2(d) provides that no amount will be considered to be permanently set aside, or to be used for a purpose described in §§1.642(c)-2(a) or (b)(1) unless under

the terms of the governing instrument and the circumstances of a particular case, the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be negligible.

Section 1.642(c)-3(b)(1) provides that, if pursuant to the terms of the governing instrument an estate, pooled income fund, or other trust pays, permanently sets aside, or uses any amount of its income for a purpose specified in § 642(c)(1), (2), or (3) of the Code, and that amount includes any items of estate or trust income not entering into the gross income of the estate or trust, the deduction allowable under § 1.642(c)-1 or § 1.642(c)-2 is limited to the gross income so paid, permanently set aside, or used.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Estate may deduct those amounts of Receivables which are paid to or set aside under § 642(c) to the extent that those amounts are includible in the gross income of the Estate for the taxable year as a result of the distribution of Receivables to Estate from Corporation.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Faith P. Colson

Faith P. Colson

Senior Counsel, Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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cc: